

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

FILED

SEP 20 2004

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *[Signature]* DEPUTY

In the matter of \_\_\_\_\_ )

LOCAL RULES AMENDMENTS )

General Order No. 540

Good cause appearing, IT IS ORDERED that the following Local Rules are amended to read, or as otherwise indicated, as follows:

**Civil Rule 1.1 Scope and Availability of Local Rules**

**e. Definitions.**

9. "FRAPPE" "Fed. R. App. P." means the Federal Rules of Appellate Procedure;
10. "~~F.R.Civ.P.~~" "Fed.R.Civ.P." means the Federal Rules of Civil Procedure;
11. "~~F.R.Crim.P.~~" "Fed.R.Crim.P." means the Federal Rules of Criminal Procedure;
12. "~~F.R.Evid.~~" "Fed.R.Evid." means the Federal Rules of Evidence;

Further, all references to the Federal Rules will be restated in this revised format.

\* \* \*

**Civil Rule 7.1. Motion Practice, Extensions, Enlargements or Shortening of Time, Submission of Orders**

**b. Motion Days Hearing Dates.**

~~All law and motion calendars shall be called on Mondays at 10:30 a.m. If Monday is a national holiday, the succeeding Tuesday will be that week's motion day. All matters noticed for that Monday shall be heard on Tuesday without special order or notice.~~

- ~~1.~~ All hearing dates for any matters on which a ruling is required shall be obtained from the law clerk of the judge to whom the case is assigned.

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**e. Time for Hearing and Schedule for Filing Papers.**

**1. The Twenty-eight (28) Day Rule Setting Time for Hearing.**

~~When there has been...No oral motions will be recognized, except in open court with the consent of the judge presiding...Pursuant to the provisions of Civil Local Rule 7.1.b:2.~~

**5. Clerk's Refusal to File.**

CivLR 7.1.e.5 is deleted in its entirety.

\* \* \*

**Civil Rule 11.1 Civil RICO Actions filed**

CivLR 11.1 is deleted in its entirety.

\* \* \*

**Civil Rule 16.1.c.2.b Pretrial and Setting for Trial**

**c. Early Neutral Evaluation ("ENE") Conference.**

**2.b.** ~~Where no Arbitration or Mediation...As the ENE procedures proceed, no stay on discovery may occur unless specifically ordered by the judicial officer on good cause shown.~~

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**Civil Rule 16.5 Plan for Reducing Cost and Delay**

**1. Pre-trial Program.**

**4. Default.**

CivLR 16.5 is deleted in its entirety. All following paragraphs are renumbered.

\* \* \*

## Civil Rule 24.1 Constitutional Questions

CivLR 24.1 is deleted in its entirety.

\* \* \*

## Civil Rule 30.1 Depositions

### a. Transcript/Record Cost.

The deposing party shall assume the cost of the record or ~~of~~ transcription unless, upon motion or the parties agreement, the court orders a waiver of transcription or a different apportionment of cost.

### c. Filing.

CivLR 30.1.c is deleted in its entirety.

\* \* \*

## Civil Rule 33.1 Interrogatories

### a. Limitation on Number of Interrogatories.

No party shall serve ... including discrete subparts ~~subparagraphs~~

\* \* \*

## Civil Rule 40.1 Assignment of Civil Cases

### c. Temporary Designation.

The current provision of CivLR 40.1.c is deleted in its entirety and replaced as follows:

Absent an order to the contrary, any judge sitting in this District is designated to handle any matters requiring action on cases assigned to a judge who is unavailable.

### d. Low Number Rule, Criteria.

The clerk shall promptly examine the original complaint or petition in each civil action and proceeding hereafter filed and ascertain whether any one or more civil actions or proceedings pending or any one or more currently filed appear ... or (5) where a case is refiled within one year of

having previously been terminated by the Court; or (6) for other reasons would entail substantial duplication of labor heard by different judges.

\* \* \*

#### **Civil Rule 54.1 Costs**

CivLR 54.1 is being deleted in its entirety.

\* \* \*

#### **Civil Rule 65.1.2 Bonds and Sureties**

- b. **Qualifications of surety.** Every bond must have as surety either ... under 31 U.S.C. Sections ~~§§9301-9304~~ 9306...

\* \* \*

#### **Civil Rule 72.2 Assignment and Designation Procedures**

- f. Where the parties consent to trial and disposition ... such case shall be set before the magistrate judge...

\* \* \*

#### **Civil Rule 83.8 Non-appropriated Funds, Plans for Administration of the Court Library Fund and Pro Bono Fund**

- a.. **Guidelines for Use.**

##### **2. Pro Bono Fund.**

- a. CivLR 83.8.a.2.a is deleted in its entirety.
- b. This section is redesignated as "a."
1. This subparagraph is redesignated as "b."
2. This subparagraph is redesignated as "c."

\* \* \*

## **Civil Rule E.1 Actions in Rem and Quasi in Rem**

### **b. Security for Costs and Marshal's Fees and Expenses; Forfeiture Actions Brought by the United States.**

#### **1. Costs.**

In an action covered by Rule E, a party may serve upon an adverse party and file notice to post security for costs and expenses...Should the party fail to do so, it may not neither file additional papers nor participate further...

\* \* \*

## **Criminal Rule 1.1 Scope and Availability of Local Rules**

### **e. Applicable Civil Rules.**

- 10. Rule ~~28.1~~ 40.1.c      Interpreters Temporary Designation
- 13. Rule 65.1.2
- 21. Rule 83.42

\* \* \*

## **Criminal Rule 5.1 Arrest by Federal Agencies and Others**

CrimLR 54.1 is being deleted in its entirety.

\* \* \*

## **Criminal Rule 12.2.1 Insanity Defense and Mental Condition Experts**

- a. CrimLR 12.2.1 is deleted in its entirety.

\* \* \*

## **Criminal Rule 28.1 Interpreters**

### **b. Out-Of-Court Interpreting.**

- 2. Compensation for out-of-court interpreters ...

\* \* \*

## Criminal Rule 30.1 Jury Instructions

### a. Proposed Instructions.

In all jury trials, ... final proposed written instructions prior to the beginning of trial ...

\* \* \*

## Criminal Rule 32.1 Sentence, Judgment and Probation.

### a. Presentence Reports.

2. **Modification of Schedule.** For good cause shown, the Court may modify the time schedule for sentence sentencing hearing or the filing requirements.
3. **Presentence Report.** The presentence report is to be completed, filed with the Court, and mailed (or made available to defense counsel who make pick-up arrangements) 35 days (that is, five weeks) prior to the date fixed for the Sentencing Hearing. given to the defendant, the defendant's attorney, and the assigned attorney for the government 35 days (that is, five (5) weeks) prior to the date fixed for the sentencing hearing unless the defendant waives this minimum period. It shall include the sentencing summary chart following this rule.
4. **Review.** Defense ... for departure (other than 5K1.1) if any ... a copy of the pre-sentence presentence report ... Probation oOffice.
5. **Objections.** Unless otherwise ordered by the Court, within Eighteen (18) fourteen (14) days prior to the date fixed for the sentencing hearing, all objections, if any, to the presentence report shall be filed and served by the government and counsel for the defendant: after receiving the presentence report, the parties must state in writing any objections, including objections to material information, sentencing guideline ranges, and policy statements contained in or omitted from the report. If the presentence report is not timely filed--that is, 35 days prior to the scheduled sentencing date--then the defendant and the government shall have seventeen (17) days following the actual date on which the presentence report is filed within which to file and serve. Objections should not include arguments for aggravation or leniency, unless based on claimed errors in the presentence report.

6. **Motions for Departure.** Unless otherwise ordered by the Court,  
~~Any~~ motions for departure (other than 5K1.1) shall be filed ...
8. **Motions for Departure Under 5K1.1.** Motions for departure ...  
Such motions and supporting written material shall not be filed in  
the Court ...
10. **Addendum Addressing Objections.** ~~No less than five(5)~~ At least  
seven (7) days before the scheduled sentencing hearing, unless  
otherwise ordered by the Court,....

\* \* \*

#### **Criminal Rule 32.1.1 Sentence, Judgment and Probation.**

CrimLR 32.1.1 is deleted in its entirety.

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#### **Criminal Rule 44.1 Right to and Assignment of Counsel**

- b. **Appearance and Withdrawal of Counsel.** An attorney appearing for a  
Defendant in a criminal case, whether retained or appointed, shall  
promptly file with the Clerk a written appearance ~~on the Court-approved~~  
form.

#### **Criminal Rule 46.1 Release From Custody**

- a. **Bail, Conditions of Release.**
  2. **Posting Bail.**
    - a. **Personal Appearance Bonds.**
      5. Properly completed bail ... approved by an Assistant  
United States ~~a~~Attorney on the forms ...
  - b. **Corporate Surety Bonds.**
    2. A properly completed bail information sheet approved by an  
Assistant United States ~~a~~Attorney, ...

\* \* \*

### **Criminal Rule 57.1 Sanctions for Noncompliance With Rules**

- a. Failure of counsel ... may be grounds for imposition ...

\* \* \*

### **Criminal Rule 57.2 Assignment**

- c. No more than two ancillary cases ... the U.S. ~~a~~Attorney shall so advise the Clerk.

\* \* \*

### **Criminal Rule 57.4 United States Magistrate Judges**

- b. **Proposed Orders Regarding Case Dispositive Motions Under 28 U.S.C. 636(b)(1)(B).**

- 1. Upon the designation by a district judge ...

- c. **Other Duties.**

- 4. Conduct necessary proceedings leading to the potential revocation of probation or supervised release;
  - 8. Perform the functions specified in 18 U.S.C. §§ 4107, 4108 and 4109 ...

\* \* \*

### **Criminal Rule 57.5 Procedure in Imperial County Cases**

- b. **Further Proceedings.** The magistrate judge in Imperial County ~~El Centro~~ will conduct such duties as are assigned by the Court.

\* \* \*

### **Habeas Rule HC.2 Habeas Corpus Proceedings (28 U.S.C. Section 2254) - Petitions Not Involving Death Penalty**

- d. **Dispositive Rulings on the Merits.**

- 1. In accordance with Civil Local Rule 72.1 ... Within the time period set forth in the magistrate judge's report and recommendation, but not less than ten (10) days, any party...



\* \* \*

**Habeas Rule HC. 3 Habeas Corpus Proceedings (U.S.C. Section 2254) - Petitions Involving Death Penalty**

**d. Counsel.**

- 1. Appointment of Counsel.** Each indigent petitioner shall be represented by counsel ... counsel may be appointed ... under 21 U.S.C. § 848(g)(4).

**e. Filing.**

CivLRHC.3.e. is deleted in its entirety.

**Internal Format For Citations.**

All references in the local rules to the United States Code shall be stated as "U.S.C."


Further, all internal citation to local rules shall be stated in a consistent form; i.e., 52.1.b.3 versus 52.1(b)(3).

\* \* \*


The period of public comment shall be now until September 30, 2004. The effective date of the amended rules is October 1, 2004. Any comments should be submitted to the Clerk, U. S. District Court, at 880 Front Street, Room 4290, San Diego, California 92101-8900. Please note on the envelope: In re: Local Rules Amendments.

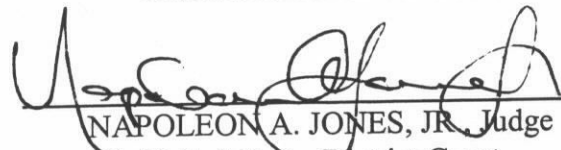
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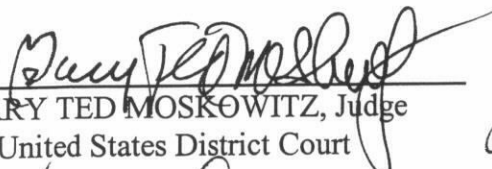
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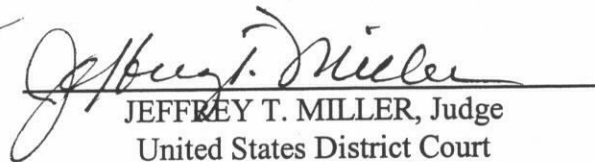
  
MARILYN L. HUFF, Chief Judge  
United States District Court

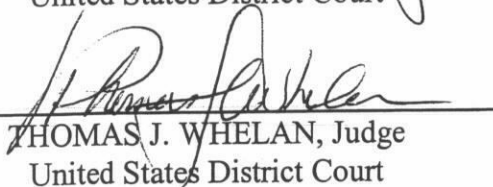
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JUDITH N. KEEP, Judge  
United States District Court

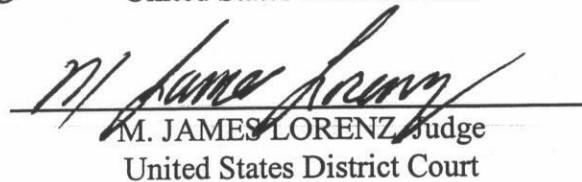
  
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United States District Court

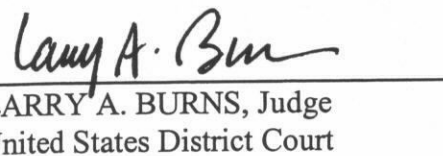
  
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United States District Court

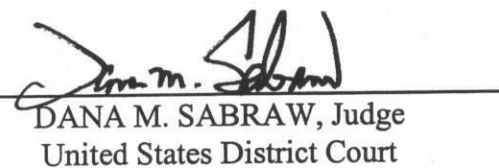
  
BARRY TED MOSKOWITZ, Judge  
United States District Court

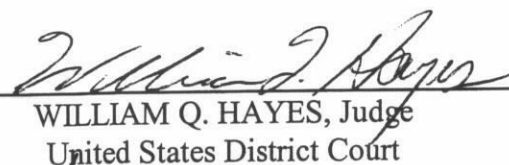
  
JEFFREY T. MILLER, Judge  
United States District Court

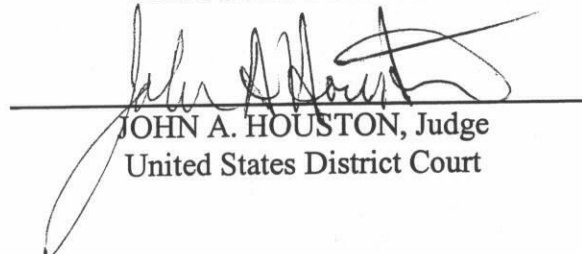
  
THOMAS J. WHELAN, Judge  
United States District Court

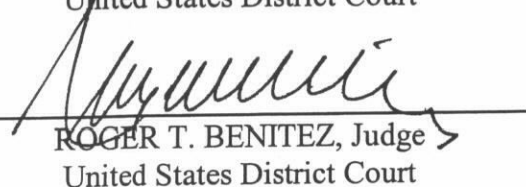
  
M. JAMES LORENZ, Judge  
United States District Court

  
LARRY A. BURNS, Judge  
United States District Court

  
DANA M. SABRAW, Judge  
United States District Court

  
WILLIAM Q. HAYES, Judge  
United States District Court

  
JOHN A. HOUSTON, Judge  
United States District Court

  
ROGER T. BENITEZ, Judge  
United States District Court